

REMARKS

Claims 52-120 are pending. In response to the restriction requirement set forth by the Office Action, Applicants hereby elect claims 52-87 and 106-120 with traverse and file herewith a divisional application directed to claims 88-105.

Thus, claims 52-87 and 106-120 are currently pending in this case. Claims 52, 65 and 106 are the only pending independent claims. Applicants hereby amend claims 52, 65 and 106 along with a number of dependent claims, and submit that none of the amended claims introduce new matter.

35 U.S.C. § 112

Claims 52-87 and 106-120 stand rejected under 35 U.S.C. § 112 ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as their invention.

The Office Action, at page 2, asserts that these claims are indefinite because it is unclear from the claim language what is being claimed. Applicants respectfully traverse. Amended claims 52, 65 and 106 are clearly directed to “a container.”

The Office Action, at page 3, further asserts that the phrases “adapted to” and “capable of” render the claims vague and indefinite. Applicants have deleted these phrases from all independent claims.

Finally, with respect to claim 68, the Office Action, at page 3, asserts that there is insufficient antecedent basis for the limitation “surface means.” Applicants have amended claim 68 to recite the “sealing means,” and submit that this amendment eliminates any ambiguity in the claim.

35 U.S.C. §§ 102 & 103

The Office Action rejected various claims, including independent claims 52, 65 and 106, under 35 U.S.C. § 102(b) (“Section 102”) as anticipated by a number of individual references. In particular, claims 52-54, 57-59, 61-68, 71-73, 75-79, 83, 85, 106-109, 111, 114-116, 119 and 120 stand rejected under Section 102 as being anticipated by UK Pat. App. 2,306,429 to Allbrighton (hereinafter “Allbrighton”). Claims 52-55, 63-69, 106-109 and 112 stand rejected under Section

102 as being anticipated by U.S. Pat. No. 4,691,838 to Graham et al. (hereinafter “Graham”). Claims 52-54, 60, 62-68, 74, 76-81, 84, 106-109, 111 and 117 stand rejected under Section 102 as being anticipated by U.S. Pat. No. 4,625,883 to Burke et al. (hereinafter “Burke”). Claims 52-54, 62-68, 76-79 and 106-111 stand rejected under Section 102 as being anticipated by U.S. Pat. No. 5,305,909 to Merritt (hereinafter “Merritt”). Applicants address each of these allegedly anticipatory references below.

In addition, the Office Action rejected a number of dependent claims under 35 U.S.C. § 103(a) (“Section 103”) as obvious in view of the prior art. In particular, claims 56, 70, 113 and 118 stand rejected under Section 103 as being unpatentable over UK Pat. App. 2,306,429 to Allbrighton. Claim 82 stands rejected under Section 103 as being unpatentable over Burke in view of Graham. Claims 86 and 87 stand rejected under Section 103 as being unpatentable over Burke in view of U.S. Pat. No. 5,249,692 to Gunderson. Importantly, not one of independent claims 52, 65 or 106 stand rejected under Section 103 for obviousness reasons. Since, as explained below, Applicants’ dependent claims all depend from allowable base independent claims, Applicants respectfully submit that addressing the obviousness rejections raised by the Office Action is unnecessary at this time.

With respect to amended independent claims 52 and 65, not one of Allbrighton, Graham, Burke or Merritt teach or suggest use of an anti-skimming layer that operates “without excluding the formulation vapor in the container from contacting the water-based formulation,” as recited by both of independent claims 52 and 65. In fact, the Office Action admits that, in each of Allbrighton, Graham, Burke and Merritt, “air is prevented from contacting the surface of the paint.” (See Office Action at pp. 4-7). Here, in contrast, Applicants’ anti-skimming layer performs its function “without excluding the formulation vapor in the container from contacting the water-based formulation.” Applicants therefore respectfully submit that amended independent claims 52 and 65 are allowable over each of the above-cited references. Applicants further submit that dependent claims 53-64 and 66-87 are also allowable as depending from allowable base independent claims.

With respect to amended independent claim 106, not one of Allbrighton, Graham, Burke or Merritt teach or suggest use of “a means for retaining a layer of the water-based formulation and the formulation vapor,” as recited by independent 106. That is, there is no indication that the inserts of the cited references retain a layer of paint and/or paint vapor during operation.

Applicants therefore respectfully submit that amended independent claims 106 is allowable over each of the above-cited references. Applicants further submit that dependent claims 107-120 are also allowable as depending from allowable base independent claims.

CONCLUSION

In view of the foregoing, Applicants request reconsideration and allowance of claims 52-87 and 106-120 in due course. If, in the Examiner's opinion, a telephonic interview would expedite allowance of the claims, the undersigned attorney invites the Examiner to call him at the telephone number given below.

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Respectfully submitted,


Timothy J. Keefer
Attorney for Applicants
Reg. No. 35,567

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606-1229
Telephone: (312) 201-2327
Facsimile: (312) 201-2555
e-mail: keefe@wildmanharrold.com
1255463-1

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